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File No. O. Salaries & Allowances/CB.M./52

Regal Department—

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Subject:— Opinions under the Bombay legislature members' Salaries and allowances Act, 1937.

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It appears that Dr. K.A.Hamied was a member of the Bombay Legislative Council for the period from 3rd April 1946 to 24th April 1952 and during this period has drawn neither the salary nor the allowances admissible to him as member of the Legislative Council. In 1946 he had preferred a bill for Rs. 900 for the period from 1st April to 30th September on 2.10.1946, and the bill was passed for payment for Rs. 890 on 3.10.1946 after disallowing Rs. 10 in respect of the 1st and 2nd April 1946 in accordance with section 3 of the Bombay Act XI of 1946. He did not take delivery of the cheque and returned the token stating that the salary of the members of the Council was so insignificant that he did not think it necessary for him to accept the same. On the 19th August 1952 he has written to the Bombay Legislature Department that the circumstances under which he thought it not necessary to draw the salary have since changed and it happened only in 1946 or 1947 when the token for the bill for Rs. 890 was returned by him without receiving the cheque for the sum, whereafter he quite forgot to prefer his bills and in 1951 was out of India. On these facts, the following questions have been raised for the R.L.A.'s advice:

(1) Whether any limitation for the claim applies

(2) Whether Dr. Hamied having once refused and his refusal having been accepted, he can now claim it without withdrawing his refusal

(3) Whether scrutiny of the claim barred by rules can be authorised even though the claimant is an M.L.C. when satisfactory reasons for not claiming the money in time are not forthcoming.

2 On the first point it may be observed that in Bombay Act III of 1937 the payment made

to members has been described as a salary following the provisions of the Government of India Act, 1935, which have now been re-affirmed in the Constitution. In the case of The Pubjab Province v. Pandit Tara Chand (1947 Federal Law Journal, vol. 10, p 56) the Federal Court has held that Article 102 of the Limitation Act is intended to cover all claims for wages, pay or salary not otherwise expressly provided for in any other Articles of the Schedule. Since there is no provision in any other Article of the Schedule prescribing any limitation for the claim of the salary by a member of the Bombay Legislature, Article 102 would be attracted. That only means that in case Dr. Hamied seeks to assert his claim in a Court of law, he may be confronted by the bar of limitation; but his right to receive pay-ment would subsist even after the remedy by action is barred.

3 On the second point it must be observed that parliamentary practice does provide for a member declining to take his parliamentary salary (see May's Parliamentary Practice 15th edn. 1950, p.80). Dr. Hamied's refusal to take delivery of the cheque in 1946 on the ground that the salary of the members of the Council was so insignificant that he did not think it necessary to accept it would amount to declining to accept the salary payment of which was sought to be made to him. Thereafter, he has not actually declined payment but refrained from making a claim

His declining to accept the cheque and his subsequent conduct would not, however, create any estoppel so as to extinguish his claim.

4 That being the position, on the third question and generally, the R.L.A. would advise that the matter should be left to the discretion of the Chairman who may be suplied a copy of this opinion.

Id./P.M.L. 16/10

Remembrancer of Legal Affairs.

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U.R. to F.D. No. 17214 A dated 17th October 1952.

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